

1 Honorable James L. Robart
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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

10 ALBERTA SMITH,
11 Plaintiff,
12 v.
13 R. ALEXANDER ACOSTA, Secretary of
14 Labor, U.S. Department of Labor,
15 Defendant.

16 NO. C18-0788 JLR
17 
18 ~~PROPOSED~~ STIPULATED
19 PROTECTIVE ORDER

20 1. PURPOSES AND LIMITATIONS

21 Discovery in this action will involve production of confidential, proprietary, or private
22 information for which special protection may be warranted. Accordingly, the parties hereby stipulate
23 to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge
24 that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all
25 disclosures or responses to discovery, the protection it affords from public disclosure and use
26 extends only to the limited information or items that are entitled to confidential treatment under the
27 applicable legal principles, and it does not presumptively entitle parties to file confidential
28 information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents, information, and tangible
3 things produced or otherwise exchanged: (1) medical records and medical information, (2) personnel
4 and employment-related records of any current or former government employee and/or military
5 employee, (3) tax records; and (4) any other records whose release without a protective order would
6 potentially violate the Privacy Act, 5 U.S.C. § 552a.
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10 3. SCOPE

11 The protections conferred by this agreement cover not only confidential material (as defined
12 above), but also (1) any information copied or extracted from confidential material, including but not
13 limited to answer to interrogatories and requests for admissions; (2) all copies, excerpts, summaries,
14 or compilations of confidential material; and (3) any testimony, conversations, or presentations by
15 parties, potential witnesses, or their counsel that might reveal confidential material. However, the
16 protections conferred by this agreement do not cover information that is in the public domain or
17 becomes part of the public domain through trial or otherwise.
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21 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

22 4.1 Basic Principles. A receiving party may use confidential material that is disclosed or
23 produced by another party or by a non-party in connection with this case only for prosecuting,
24 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
25 categories of persons and under the conditions described in this agreement. Confidential material
26 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
27 that access is limited to the persons authorized under this agreement.
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1 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the
2 court or permitted in writing by the designating party, a receiving party may disclose any
3 confidential material only to:

4 (a) the receiving party's counsel of record in this action, as well as employees and/or contract
5 workers of counsel to whom it is reasonably necessary to disclose the information for this litigation;

6 (b) the receiving party and/or the officers, directors, and employees (including in house
7 counsel) of the receiving party to whom disclosure is reasonably necessary for this litigation, unless
8 the parties agree that a particular document or material produced is for Attorney's Eyes Only and is
9 so designated;

10 (c) experts and consultants to whom disclosure is reasonably necessary for this litigation and
11 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

12 (d) the court, court personnel, and court reporters and their staff;

13 (e) copy or imaging services retained by counsel to assist in the duplication of confidential
14 material, provided that counsel for the party retaining the copy or imaging service instructs the
15 service not to disclose any confidential material to third parties and to immediately return all
16 originals and copies of any confidential material;

17 (f) actual and potential witnesses in the action and their union representative, if any, to
18 whom disclosure is reasonably necessary and who have signed the "Acknowledgment and
19 Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered
20 by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
21 confidential material must be separately bound by the court reporter and may not be disclosed to
22 anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to unnecessarily encumber or delay the case development process or to impose unnecessary expenses and burdens on other parties) expose the designating party to sanctions.

1 If it comes to a designating party's attention that information or items that it designated for
2 protection do not qualify for protection, the designating party must promptly notify all other parties
3 that it is withdrawing the mistaken designation.
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5 5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement
6 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
7 disclosure or discovery material that qualifies for protection under this agreement must be clearly so
8 designated before or when the material is disclosed or produced.
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10 (a) Information in documentary form: (e.g., paper or electronic documents and
11 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the
12 designating party must affix the word "CONFIDENTIAL" to each page that contains confidential
13 material. If only a portion or portions of the material on a page qualifies for protection, the
14 producing party also must clearly identify the protected portion(s) (e.g., by making appropriate
15 markings in the margins).
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17 (b) Testimony given in deposition or in other pretrial proceedings: the parties and any
18 participating non-parties must identify on the record, during the deposition or other pretrial
19 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
20 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
21 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
22 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at
23 trial, the issue should be addressed during the pre-trial conference.
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25 (c) Other tangible items: the producing party must affix in a prominent place on the
26 exterior of the container or containers in which the information or item is stored the word
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1 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the
2 producing party, to the extent practicable, shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
4 qualified information or items does not, standing alone, waive the designating party's right to secure
5 protection under this agreement for such material. Upon timely correction of a designation, the
6 receiving party must make reasonable efforts to ensure that the material is treated in accordance with
7 the provisions of this agreement.

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10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
12 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
13 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
14 or a significant disruption or delay of the litigation, a party does not waive its right to challenge a
15 confidentiality designation by electing not to mount a challenge promptly after the original
16 designation is disclosed.

17 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding
18 confidential designations without court involvement. Any motion regarding confidential
19 designations or for a protective order must include a certification, in the motion or in a declaration or
20 affidavit, that the movant has engaged in a good faith meet and confer conference with other affected
21 parties in an effort to resolve the dispute without court action. The certification must list the date,
22 manner, and participants to the conference. A good faith effort to confer requires a face-to-face
23 meeting or a telephone conference.

1 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention,
2 the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7
3 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such
4 motion shall be on the designating party. Frivolous challenges, and those made for an improper
5 purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose
6 the challenging party to sanctions. All parties shall continue to maintain the material in question as
7 confidential until the court rules on the challenge.
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10 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
11 LITIGATION

12 If a party is served with a subpoena or a court order issued in other litigation that compels
13 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party
14 must:

15 (a) promptly notify the designating party in writing and include a copy of the
16 subpoena or court order;

17 (b) promptly notify in writing the party who caused the subpoena or order to issue in
18 the other litigation that some or all of the material covered by the subpoena or order is subject to this
19 agreement. Such notification shall include a copy of this agreement; and

20 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
21 designating party whose confidential material may be affected.

1 || 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
3 material to any person or in any circumstance not authorized under this agreement, the receiving
4 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
5 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
6 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
7 and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be
8 Bound" that is attached hereto as Exhibit A.
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12 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
13 MATERIAL

14 When a producing party gives notice to receiving parties that certain inadvertently produced
15 material is subject to a claim of privilege or other protection, the obligations of the receiving parties
16 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
17 modify whatever procedure may be established in an e-discovery order or agreement that provides
18 for production without prior privilege review. The parties agree to the entry of a non-waiver order
19 under Fed. R. Evid. 502(d) as set forth herein.
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22 10. NON TERMINATION AND RETURN OF DOCUMENTS
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24 Within 60 days after the termination of this action, including all appeals, each receiving party
25 must return all confidential material to the producing party, including all copies, extracts and
26 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.
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1 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
2 documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition
3 and trial exhibits, expert reports, attorney work product, and consultant and expert work product,
4 even if such materials contain confidential material.
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6 The confidentiality obligations imposed by this agreement shall remain in effect until a
7 designating party agrees otherwise in writing or a court orders otherwise.
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9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD
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11 DATED this 7th day of November, 2018.
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14 ANNETTE L. HAYES
15 United States Attorney
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18 */s/ Patricia D. Gugin*
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28

DATED this 7th day of November, 2018.

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30 */s/ Tiffany M. Cartwright*
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35 Phone: 206-
36 E-mail: TiffanyC@mhbg.com
37 Attorneys for Plaintiff
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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

4 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
5 documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding
6 in any other court, constitute a waiver by the producing party of any privilege applicable to those
7 documents, including the attorney-client privilege, attorney work-product protection, or any other
8 privilege or protection recognized by law.

10 DATED this 8 day of November, 2018.

The Honorable James L. Robart
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of *Alberta Smith v Acosta*, Case No. C18-0788 JLR. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date:

City and State where sworn and signed: _____

Printed name:

Signature: